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No. 83-300
IN THE
Supreme Court of the United States

October Term, 1983

CITY OF LOS ANGELES
DEPARTMENT OF WATER AND POWER,
Petitioner,

vs.

NATIONAL AUDUBON SOCIETY, a corporation;
FRIENDS OF THE EARTH, a corporation;
THE MONO LAKE COMMITTEE, a corporation;
and the LOS ANGELES AUDUBON SOCIETY, a corporation;
Respondents.

**Amicus Curiae Brief of
the Metropolitan Water District of Southern California
in Support of
Petition for Writ of Certiorari to the
Supreme Court of the State of California.**

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INTRODUCTION.

The Department of Water and Power of the City of Los Angeles filed a Petition with this Court on August 22, 1983, for a writ of certiorari to the California Supreme Court. By its petition, the City seeks this Court's review of federal questions raised in the California Supreme Court's February 17, 1983 decision in *National Audubon Society v. Superior Court*, 33 Cal.3d 419 (modified at 33 Cal.3d 726a). In that

decision, the California Court extended the common law public trust doctrine in a manner that conflicts with applicable decisions of the Court, as indicated in Rule 17.1(c). Furthermore, that extension impairs water rights that Los Angeles has perfected under California water law, by allowing future reallocation of those rights to other uses, in violation of the Fourteenth Amendment of the Federal Constitution. The California Court's decision also authorizes similar reallocation on a continuing basis, of all water rights under which California's communities have developed vital public water supplies.

The California Court acted in response to respondents' request to circumvent a comprehensive statutory program for allocating water rights for public water supplies (Petition, page 5; Appendix to Petition Pages A-34 to A-37). Respondents sought that circumvention in order to establish a legal basis for reallocating use of fresh water from streams in Mono Basin, away from domestic and other municipal purposes within the City of Los Angeles. Respondents seek to reduce or eliminate the use of that water for those purposes, so that it would, instead, flow into Mono Lake, which is a natural salt sink located in an arid, unpopulated, area approximately 150 miles northwest of Death Valley (Petition, pages 3, 5). By flowing into the Lake, the water would become highly salinized and thus unsuitable for use as a public water supply.

In extending the public trust doctrine as respondents requested, the California Court has established the controlling law for the remaining proceedings, and, in fact, for other pending California actions, on the basis of an improper application of the decision of this Court in *Illinois Central Railroad Co. v. Illinois* (1892) 146 U.S. 387, so as to violate the property protections of the Fourteenth Amendment of the Federal Constitution.

INTEREST OF AMICUS.

Amicus, The Metropolitan Water District of Southern California (Metropolitan), has a vital interest in this proceeding beyond that of Petitioner in two major respects. First, the Petitioner, the City of Los Angeles, lies within Metropolitan's service area so that any reduction of its Mono Basin water supply will impose additional water supply burdens on Metropolitan. Secondly, the California Supreme Court's extension of the public trust doctrine also circumvents vested water rights and California water rights programs on which Metropolitan relies for much of its water supply.

I.

Water Service Responsibility.

Metropolitan has responsibility for providing imported water supplies to a large semi-arid portion of California which includes the City of Los Angeles and contains over half of California's people and much of its commercial and economic activity.¹ Los Angeles is one of Metropolitan's 27 member public agencies, and accordingly has rights to purchase imported water from Metropolitan.²

¹Metropolitan is a public agency formed in 1928 under the Metropolitan Water District Act, a general law of the State of California, originally enacted by the State Legislature in 1927 (Chapter 429 of the Statutes of 1927; *City of Pasadena v. Chamberlain* (1928) 204 Cal. 653). The Act was subsequently amended from time to time until it was reenacted as Stats. 1969, Chapter 209. Further amendments have been made to the 1969 Act.

Metropolitan initially comprised 11 cities, including the City of Los Angeles, which joined together for the development of an imported domestic water supply to supplement their own resources. Metropolitan now consists of 14 cities, 12 municipal water districts, and one county water authority in six counties within Southern California. Metropolitan's service boundaries consequently cover an area of approximately 5200 square miles and include a population of over 12 million people and 133 cities.

²Under the Metropolitan Water District Act, Los Angeles has preferential rights to purchase water from Metropolitan (Metropolitan Water District Act, §135).

Consequently, any reduction in Los Angeles' Mono Basin water supply will impose additional water supply burdens on *Amicus*. That burden is particularly important because of limitations on Metropolitan's own water supplies and increasing water demands in other population centers within Metropolitan's service area. Like Los Angeles, these communities have long outgrown their local water supplies and thus, along with Los Angeles, depend on Metropolitan's importation of public water supplies.

Water importations into Metropolitan's service area currently total about two million acre feet annually and provide about two-thirds of the area's water supply. The importations arrive through three separate aqueducts: (1) the Los Angeles Aqueduct, which delivers water diverted from the Owens Valley and the Mono Basin of the Eastern Sierras under Los Angeles' water rights, for use in that city; (2) Metropolitan's Colorado River Aqueduct, which delivers water from the Colorado River under a Boulder Canyon Project Act contract with the United States (*Arizona v. California* (1963) 373 U.S. 546, 562, 586-590; (1983) — U.S. —; 75 L.Ed.2d 318, 326); and (3) the State Water Project's California Aqueduct, which delivers water from the Western Sierras, under Metropolitan's contract with the State of California (*California v. Sierra Club* (1981) 451 U.S. 287, 291 n. 4; *Metropolitan Water District v. Marquardt* (1963) 59 Cal.2d 159). Metropolitan, in turn, delivers the water imported through the latter two aqueducts to its member agencies, including Los Angeles, pursuant to the Metropolitan Water District Act (Deerings' California Water Code Uncodified Acts, Act No. 9129(b)).

These importation programs are therefore highly inter-related. Thus, in 1964, Metropolitan amended its contract with the State of California to increase its entitlement to State Project water because of a projected decrease of at

least 662,000 acre feet in its annual Colorado River water supply as a result of this Court's limitation of California entitlements, in *Arizona v. California*, *supra*, 373 U.S. at 583. (See also implementing Decree, 376 U.S. 340, 342, 347.)

In particular, Metropolitan's supply is closely interrelated with Los Angeles' imports since Los Angeles can purchase water from Metropolitan to make up deficiencies in its own imports. Consequently, reduction of Los Angeles' Mono Basin water supply will increase that City's need to purchase imported water from Metropolitan and will thus increase Metropolitan's importation requirements. That, in turn, will require importation of more water from California's State Water Project since, as indicated above, this Court has limited Metropolitan's Colorado River supply.

However, the State has so far developed only half of the State Water Project (SWP) water supply required under its water service contracts with Metropolitan and other public agencies throughout California. Thus, the California Court's decision that Los Angeles' Mono Basin water rights are permanently subject to reduction or termination creates a definite potential for restricting both existing and future SWP water rights. That restriction would in turn seriously impair Metropolitan's water supply³ and force it to limit water deliveries to all of its member agencies.

II.

State Project Water Supply.

Metropolitan has an additional interest in a review of the California Supreme Court's decision because other entities have already invoked that decision as a basis for reducing

³SWP water currently provides about half of Metropolitan's water supply, but will increase to over 70% within the next few years, as Arizona's Central Arizona Project becomes operational.

the existing water supply of California's State Water Project⁴ in pending litigation before both federal and state courts. Impairment of the SWP water supply would impose serious water supply deficiencies on all of Metropolitan's member agencies, in addition to limiting Metropolitan's ability to replace any loss of Los Angeles' Mono Basin water supply.

The SWP water supply depends on water diversions from the Sacramento-San Joaquin Delta in Central California, by California's Department of Water Resources (DWR), the state agency which operates the SWP. (*California v. Sierra Club*, *supra*, 451 U.S. at 290; *Metropolitan Water District v. Marquardt*, *supra*, 59 Cal.2d at 176, 177.) The water rights which authorize those diversions are currently being litigated, with a trial court judgment expected early next year.⁵

Parties challenging SWP water rights in that litigation have already alleged as an additional basis for reducing those

⁴The SWP consists of a series of water storage and transportation facilities to transfer surplus northern California water to the Sacramento Valley, the San Francisco Bay area, the San Joaquin Valley, and Southern California. (*California v. Sierra Club*, *supra*, 451 U.S. at 290, 291; *Goodman v. County of Riverside* (1983) 140 Cal.App.3d 900, 904, hearing denied July 14, 1983.)

⁵California's State Water Resources Control Board (SWRCB) authorized the diversions by issuing water rights permits to DWR subject to continuing jurisdiction. (*United States v. California* (U.S. D.C., E.D. Calif. 1981) 529 F.Supp. 303, 305.) In 1978, after extensive hearings, the SWRCB modified those permits to improve salinity protection for local Delta waters, along with similar permits issued to the United States for the analogous federal Central Valley Project (CVP). (*Id.*) That modification has generated extensive litigation in the state courts in which Metropolitan is a party, consisting of 14 mandate petitions. California's Judicial Council has coordinated all 14 actions in one proceeding designated *Delta Water Cases*, Coordination Proceeding No. 548, which is pending before the San Francisco Superior Court. (529 F.Supp. at 306.)

Southern Delta interests have also filed an action in the Federal District Court for the Eastern District of California last year challenging SWP and CVP water rights. (*South Delta Water Agency, et al. v. United States, et al.*, Civil No. S 82-567 MLS.)

rights, the California Supreme Court's public trust decision that is the subject of this proceeding. Consequently, Metropolitan is concerned that other courts will use that decision as a basis for circumventing vital SWP water rights on which Metropolitan and scores of communities within its service area rely. Furthermore, we are concerned that those courts will apply that decision under a *stare decisis* mandate which precludes any opportunity to challenge the decisions resolution of the underlying federal questions. This new threat to existing SWP water supplies places Metropolitan in a precarious position to meet its obligations to provide water needed by communities in which half of California's people live and work.

SUMMARY OF ARGUMENT.

Amicus agrees that Petitioner held vested property rights to use Mono Basin water prior to the California Court's decision; and that that decision unconstitutionally deprives Petitioner of those rights by erroneous application of the decisions of this Court. However, since *Amicus* has particular awareness of the need for prompt review, this brief will limit its argument to the issue that the California Supreme Court's decision is ripe for review at this time, rather than rearticulate the arguments on those issues already presented in the Petition.

There are compelling reasons for review at this step of the proceedings because the California Court's decision is now being implemented as final in other matters of wide public importance. Under California law, the decision is now jurisdictionally final so that there is no present opportunity for further consideration by the California courts, of the decision's subordination of vested water rights to its new open-ended public trust concepts. Failure to review the decision now will create a cloud of uncertainty over all Cal-

ifornia water rights. That uncertainty consists not only of the ambiguities inherent in the decision itself, but also uncertainty over this Court's determination of the underlying federal questions on which the decision relies.

Furthermore, the decision creates that uncertainty at a time of increasing concern over the availability of secure and safe community water supplies and at a time of critical water rights litigation over State Water Project supplies. Delaying review of the decision will exacerbate that litigation by requiring use of the public trust extension as a new basis for reallocating those supplies before resolution of the underlying federal questions. Delay will also create substantial risk of inefficient use of judicial resources since reversal of the decision after completion of the subsequent Mono Basin proceedings, will require modification of intervening State judgments and probably relitigation of their water rights issues. Delay in reviewing the California Court's decision until after completion of the subsequent Mono Basin water rights proceedings will therefore impose unnecessary burdens on non-parties such as *Amicus*.

ARGUMENT.

I.

SPECIAL AND IMPORTANT REASONS REQUIRE REVIEW AT THIS TIME.

Review of the California Court's decision is particularly appropriate at this time because of the special and important nature of its extension of federal public trust concepts. It resolves a basic water rights issue of first impression that applies well beyond the Mono Basin factual situation. Accordingly, it directly impacts other pending water rights litigation, as well as all of the state's present and future administrative water rights and water planning functions.

In short, the decision opens a Pandora's Box that threatens relitigation of all other water supplies. Indeed, it has already been invoked in other pending water rights litigation that is currently challenging water supplies of transcendent statewide importance. Thus, delaying review of the decision until completion of the remaining Mono Basin proceedings will significantly increase the difficulty and expense of implementing a reversal of the decision upon completion of the subsequent Mono Basin proceedings.

A. General Public Importance.

The California Court's decision specifically recognizes the widespread importance of its resolution of the public trust issue. Indeed, early in its decision, the California Supreme Court states that it bypassed the normal intermediate appellate level and took the case directly from the trial court, "in view of the importance of the issues presented". (Appendix to Petition, page A-3.) It then describes the public trust issue in sweeping terms that leave no doubt of its widespread impact on California water rights generally:

"This case brings together for the first time two systems of legal thought: The appropriative water rights system

which since the days of the gold rush has dominated California water law, *and the public trust doctrine* which, after evolving as a shield for the protection of tidelands, now extends its protective scope to navigable lakes. Ever since we first recognized that the public trust protects environmental and recreational values [cite], *the two systems of legal thought have been on a collision course.* [cite] They meet in a unique and dramatic setting which highlights the clash of values. . . ." (*Id.*, emphasis added)

Compounding that importance is California's enormous dependence upon the allocation of fresh water supplies, particularly in light of increasing prospects for water supply shortages. The Governor's Commission to Review California Water Rights Law has succinctly described the pervasiveness of that dependence in light of California's most recent drought:

"Drought succeeds like nothing else in *reminding Californians of their enormous dependence upon water.* Irrigated agriculture, many industries, hydroelectric power generation, water-related recreation, fish and wildlife resources, and many aspects of our home life continue and *prosper only if adequate supplies of fresh water are available.* The recent drought demonstrates the potential frailty of that prosperity.

"During the 1976-77 drought year, water shortages forced the State Water Project to impose fifty percent deficiencies on agricultural deliveries. The U.S. Bureau of Reclamation was forced to reduce deliveries by seventy-five percent for agricultural use and by fifty percent for municipal and industrial use. While precipitation during the 1977-78 year has dramatically improved the short-term water conditions of the State, *long-term prospects remain bleak.* By the year 2000 the state's *net demand for water may considerably ex-*

ceed net dependable supply. Clearly, continuous attention to the allocation of water and to water rights law, as well as to expanding the supply of water available for beneficial use, will be necessary." (Final Report of Commission (December 1978), page 1.)

This court has also recognized the importance of California water rights allocations:

"It is probable that no problem of the Southwest section of the Nation is more critical than that of scarcity of water. As southwestern populations have grown, conflicting claims to this scarce resource have increased. To meet these claims, several Southwestern States have established elaborate procedures for allocation of water and adjudication of conflicting claims to that resource." (*Colorado River Water Cons. District v. United States* (1976) 424 U.S. 800, 804; emphasis added; footnote omitted.)

The omitted footnote specifically refers to California's codified water rights appropriation laws. (424 U.S. at 804, n. 2.)

B. Hardship on Non-Parties if Review Is Delayed.

Delaying review of the California Court's decision until after completion of all the subsequent Mono Basin proceedings will impose important hardships on *Amicus* and other non-parties. That hardship consists of uncertainty over the availability of basic public water supplies and over the validity of rights. The latter burden arises because of the decision's status as final California water law and its resulting invocation by parties in other pending water rights cases which affect vital water supplies, particularly those of California's State Water Project.

1. Water Supply Uncertainty.

Deferral of review compounds uncertainty over the future availability of public water supplies that until now had been considered assured because of their underlying water rights.

While the decision's subordination of water rights to permanent reallocation under public trust theories generates an inherent uncertainty,⁶ failure to validate the federal issues that support that subordination exacerbates the uncertainty. All subsequent California water rights determinations, judicial or administrative, will remain suspect and uncertain until this Court rules on the validity of the federal questions on which the California Court's decision bases its extension of the public trust.

The resulting uncertainty has pernicious effects on the water supplies on which California's people and economy rely. It fosters recurrent, costly and piecemeal litigation and impairs the state's administration of water rights (*In re Waters of Long Valley Creek Stream System* (1979) 25 Cal.3d 339, 355-357.) This Court reviewed the importance of certainty of water rights just this past term, stating:

"*Certainty of rights is particularly important with respect to water rights in the Western United States. The development of that area of the United States would not have been possible without adequate water supplies in an otherwise water-scarce part of the country. [cite] The doctrine of prior appropriation, the prevailing law in the western states, is itself largely a product of the compelling need for certainty in the holding and use of water rights.*" (*Arizona v. California* (1983) — U.S. —, 75 L.Ed.2d 318, 334; emphasis added.)

In a supporting note, this Court went on to observe that:

"Prior appropriation law serves western interests by encouraging the diversion of water for irrigating otherwise barren lands and for other productive uses, and

⁶See, e.g.,

"The state accordingly has the power to reconsider allocation decisions even though those decisions were made after due consideration of their effect on the public trust." (Appendix to Petition, page A-42, footnote omitted.)

by insuring developers that they will continue to enjoy use of the water. 'Appropriation law, developed in the arid West, is usually thought of as a system for water-short areas. Where there is not enough for everyone, the rule of priority insures that those who obtain rights will not have their water taken by others who start later.' F. Trelease, Cases and Materials on Water Law 11 (1979)" (75 L.Ed.2d at 334, n. 11, emphasis added.)

This Court then implemented its recognition of the importance of water rights certainty, by rejecting a special master's proposed water rights allocation, with the comment that:

"It would be counter to the interests of all parties to this case to open what may become a Pandora's Box, upsetting the certainty of all aspects of the Decree." (*Id.*, 75 L.Ed.2d at 337.)

2. Water Rights Litigation Burden.

The California Court's decision has cracked open the Pandora's Box of water rights uncertainty. Delay in reviewing the federal questions on which it relies will open it wide. California's courts and administrative agencies have other water rights allocation proceedings of major importance already before them for decision. They will undoubtedly act on some of those proceedings well before completion of subsequent proceedings in this case. Thus, delaying review until then will present this Court with legal questions which may have already been implemented in other proceedings, without federal review. Furthermore, implementing a reversal of the California Supreme Court's decision at that time will be much more difficult, because it will require rectifying, and probably relitigating, the intervening water rights allocation decisions.

As noted above, several cases are now pending in state and federal California courts challenging water rights issued

to California's State Water Project. Parties in those cases have already invoked the California Supreme Court's public trust doctrine as a basis for reducing the SWP water rights.⁷

Furthermore, California's State Water Resources Control Board continuously determines water rights allocations under its water rights administration responsibilities. (Appendix to Petition, page A-37.) It must apply the new public trust decision to those proceedings, which currently include a proceeding to determine whether to modify several hundred water rights permits for the Sacramento-San Joaquin River System.⁸ Parties to that proceeding have also invoked the public trust doctrine.⁹

Obviously, these pending water rights allocation proceedings will incorporate in their determinations the Cali-

⁷Note 4, above, describes that litigation in more detail. Recent pleadings in those cases, that assert the California Court's public trust decision include:

- a. San Francisco Superior Court; *Delta Water Cases*, Judicial Council Coordination Proceeding No. 548:
 - i. Joint Opening Brief of Petitioners Contra Costa County Water Agency, San Joaquin County Flood Control and Water Conservation District and Central Delta Water Agency, et al. on Key Legal Issues (June 15, 1983) pages 5, 105, 106, 109;
 - ii. Opening Brief of Petitioners South Delta Water Agency, et al. on Key Legal Issues (June 10, 1983) pages 20, 21, 31;
 - iii. Respondents' Memorandum of Points and Authorities on Key Legal Issues (September 8, 1982), pages 91-95, 125, 143-146.
- b. United States District Court for the Eastern District of California; *South Delta Water Agency, et al. v. United States, et al.*, Civil No. S 82-567 MLS.
 - i. Points and Authorities in Support of [Plaintiffs'] Motion for Preliminary Injunction (May 11, 1983) pages 5, 9;
 - ii. Reply Memorandum of Plaintiffs' in Support of Motion for Preliminary Injunction (June 22, 1983) pages 6, 7.

⁸"Determination of the Season of Diversion for Sacramento-San Joaquin Delta Watershed [water right] Permits With Continuing Jurisdiction (Term 80)".

⁹Brief of the Environmental Defense Fund and Save San Francisco Bay Association (May 27, 1983), pages 9-12; Post Hearing Brief of the Department of Water Resources (May 27, 1983).

ifornia Supreme Court's public trust decision, before completion of the subsequent proceedings to quantify the impact of the public trust decision on Mono Basin.

II.

THE CALIFORNIA COURT'S DECISION IS EFFECTIVELY FINAL.

Although the California Court's decision involves subsequent proceedings to determine Mono Basin factual issues, it has final *stare decisis* effect and has thus established binding state water rights law. The decision also effectively controls the subsequent Mono Basin proceedings by removing any legal issue of taking, and by imposing continuing authority to reallocate petitioner's water rights even if petitioner prevails in those proceedings. Accordingly, review of the decision now would satisfy the type of non-mechanical determination of finality jurisdiction contemplated by this Court in *Cox Broadcasting Corp. v. Cohn* (1975) 420 U.S. 469, 477.

A. The Decision Has Final Effect Under California Law.

The decisions of California's Supreme Court are binding upon and must be followed by all the state's courts. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 58 Cal.2d 450, 455.) Consequently, the California Court's imposition of a new public trust limitation on vested water rights jurisdictionally controls all existing and prospective water rights allocation proceedings. (*Frink v. Prod* (1982) 31 Cal.3d 166, 170.) Under California law, therefore, all water rights in California have become subject to reallocation by California's courts and administrative agencies, independently of the outcome of the subsequent Mono Basin proceedings. (Appendix to Petition, pages A-39, 41, 42.)

Although the decision observed that it was but one step in the eventual resolution of the specific Mono Lake con-

troversy (Appendix to Petition, page A-51), it also manifested a clear intention to impose new state water reallocation authority on all water rights forthwith:

"The state as sovereign retains continuing supervisory control over its navigable waters and the lands beneath those waters. This principle, fundamental to the concept of the public trust, applies to rights in flowing waters as well as to rights in tidelands and lakeshores; it prevents any party from acquiring a vested right to appropriate water in a manner harmful to the interests protected by the public trust. (Appendix to Petition, page A-39; footnote omitted; emphasis added.)

"Once the state has approved an appropriation, the public trust imposes a duty of continuing supervision over the taking and use of the appropriated water. In exercising its sovereign power to allocate water resources in the public interest, the state is not confined by past allocation decisions which may be incorrect in light of current knowledge or inconsistent with current needs.

"The state accordingly has the power to reconsider allocation decisions even though those decisions were made after due consideration of their effect on the public trust." (Id., pages A-41, 42; footnote omitted; emphasis added.)

Certainly, the California Court considered that its extension of public trust authority to reallocate prior water rights was final and binding on the courts and administrative agencies that are involved in planning and allocating California's water resources.

B. The Decision Controls the Subsequent Proceedings.

In a very real sense, the California Court's decision controls the subsequent proceedings in this litigation. Indeed, there would be no subsequent proceedings had the California

Court affirmed the trial court's ruling that the public trust doctrine is subsumed in California's water rights system. (Appendix to Petition, pages A-3.)

In addition, the decision removes any legal question of compensation from those proceedings. It clearly indicates that the imposition of the new public trust limitation on water rights does not constitute a taking of property for which compensation would be required:

"... By implication, however, the determination that the property was subject to the trust, despite its implication as to future uses and improvements, was not considered a taking requiring compensation." (Appendix to Petition, page A-29, n. 22.)

"In summary, the foregoing cases amply demonstrate the continuing power of the state as administrator of the public trust, a power which extends to the revocation of previously granted rights or to the enforcement of the trust against lands long thought free of the trust [cite]." (Appendix to Petition, page A-29.)

"... In exercising its sovereign power to allocate water resources in the public trust, the state is not confined by past allocation decisions which may be incorrect in light of current knowledge or inconsistent with current needs." (*Id.*, page A-41.)

Consequently, the decision limits the subsequent Mono Basin proceedings to a factual determination of whether and to what degree Petitioner's water rights will be reallocated at this time. Those proceedings will not include any issue of taking; nor will they address the impact on petitioner of the continuing state authority to reallocate Petitioner's water rights after those proceedings end.

This proceeding thus differs importantly from the somewhat analogous situation in *San Diego Gas and Electric Co. v. San Diego* (1981) 450 U.S. 621, where this Court

rejected review by a narrow 5-4 margin. There, the California Court had not decided, as it has here, whether any taking had occurred or could occur. (450 U.S. at 636.) Furthermore, the procedural history of that case differs importantly from that of the pending case. In *San Diego Gas and Electric*, the property owner initiated the litigation to test the exercise of delegated police powers over property it intended to develop in the future. Indeed, the property owner had not in fact requested the City's approval for that development. (450 U.S. at 626.)

On the other hand, third parties initiated this action to preempt operating property rights that the regulating governmental entity (the State Water Resources Control Board) had already granted Petitioner. Petitioner had moreover been using that right to provide vital public water supplies for many years. (Petition, pages 3-5, 14-17.) In addition, this proceeding seeks review of a decision that imposes new judicial limitations based on a California Court's extension of decisions of this Court (Petition, pages 18-23), rather than on the California Court's interpretation of the exercise of police powers delegated by the California Legislature. Consequently this case presents a much more immediate and confiscatory challenge to vested property rights than did *San Diego Gas and Electric*, independently of its widespread public importance described above in Section I.

Conclusion.

Amicus respectfully urges this Court to approve Los Angeles' Petition to review the California Supreme Court's decision in *National Audubon Society v. Superior Court*. We urge that review because the decision seriously impairs federally protected rights on which millions of people rely for basic water supplies; and because it bases that impairment on erroneous interpretations of the decisions of this

Court. We further urge that review not be deferred until completion of the subsequent Mono Basin proceedings because the California Court's decision constitutes a jurisdictionally final statement of California law that now controls pending proceedings that affect much of California's water supply; and because delay will create additional uncertainty in the administration of vital public water supplies, as well as the probability of unproductive use of judicial resources.

Dated: September 21, 1983.

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